



# RAVALLI COUNTY ATTORNEY

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**TO:** Commissioners ✓  
**CC:** Planning Department  
**FROM:** Alex Beal, Deputy AB  
**DATE:** August 2, 2007



**RE:** Terry Nelson Family Transfer Subdivision Evasion

Per your request at a public meeting earlier this month, I have researched what actions can be taken against Terry Nelson to recoup those amounts that he would have been required to contribute to the county if he has pursued a subdivision rather than used the family transfer mechanism. I will restate the relevant facts as I understand them.

Terry Nelson filed 6 family transfer deeds, which were filed by the Clerk and Recorder. Subsequent to that time, all seven lots (6 newly created and one remainder) were conveyed to various purchasers. The seven lots have an internal road and (looked at as a whole) appear indistinguishable from a subdivision. More than a year has passed since the last of the 6 lots was sold to a bona fide purchaser.

As I noted at the public meeting, the statute of limitations for pursuing a criminal violation of the subdivision regulations (like all misdemeanors) is 1 year from the criminal act. No matter what we consider the criminal act, it occurred at least 1 year ago, and thus no criminal prosecution is possible.

You have also asked that I consider what civil remedies are available to the county. Generally this consists of identifying the legal claim, such as "negligence," "infliction of emotional distress," "breach of contract," "slander," or other identified claim. Upon researching the matter, I do not believe we have a traditional legal claim that applies to this situation. What we are left with, however, is a suit in equity, most likely for "unjust enrichment." Unjust enrichment is an equitable concept designed to prevent a party from benefiting from its wrongful acts. This will require us to prove that Mr. Nelson evaded subdivision regulations, and as a result, unjustly was enriched by the amounts he did not expend on the project to bring it into compliance. Prior to the filing of such a complaint, I will require an estimate from the Road Department, or a private contractor, of the amounts of pro-rata road payments Mr. Nelson would have been required to pay. Additionally, the amount required to bring the internal subdivision road up to standards could be recoverable, and should be ascertained.